

REFERENCE TITLE: liquor licenses; insurance; drug paraphernalia

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1127

Introduced by
Senator McCune Davis

AN ACT

AMENDING SECTIONS 4-202 AND 4-210, ARIZONA REVISED STATUTES; RELATING TO
LIQUOR LICENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 4-202, Arizona Revised Statutes, is amended to
3 read:

4 4-202. Qualifications of licensees; application; background
5 information; prior convictions; liability insurance

6 A. Every spirituous liquor licensee, other than a club licensee, a
7 corporation licensee, a limited liability company licensee or an out-of-state
8 licensee, shall be a citizen of the United States and a bona fide resident of
9 this state or a legal resident alien who is a bona fide resident of this
10 state. If a partnership, each partner shall be a citizen of the United
11 States and a bona fide resident of this state or a legal resident alien who
12 is a bona fide resident of this state, except that for a limited partnership
13 an individual general partner is required to meet the qualifications of an
14 individual licensee, a corporate general partner is required to meet the
15 qualifications of a corporate licensee and a limited partner is not required
16 to be a bona fide resident of this state. If a corporation or limited
17 liability company, it shall be a domestic corporation or a foreign
18 corporation or a limited liability company that has qualified to do business
19 in this state. A person shall hold a club license, corporation license,
20 limited liability company license, partnership license or out-of-state
21 license through an agent who shall be a natural person and meet the
22 qualifications for licensure, except that an agent for an out-of-state
23 license as specified in section 4-209, subsection B, paragraph 2 need not be
24 a resident of this state. For the purposes of this subsection, "agent" means
25 a person who is designated by an applicant or licensee to receive
26 communications from the department and to file documents and sign documents
27 for filing with the department on behalf of the applicant or licensee.

28 B. A person shall file an application for a spirituous liquor license
29 on a form prescribed by the director. The director shall require any
30 applicant and may require any controlling person, other than a bank or
31 licensed lending institution, to furnish background information and to submit
32 a full set of fingerprints to the department. The department of liquor
33 licenses and control shall submit the fingerprints to the department of
34 public safety for the purpose of obtaining a state and federal criminal
35 records check pursuant to section 41-1750 and Public Law 92-544. The
36 department of public safety may exchange this fingerprint data with the
37 federal bureau of investigation. If a license is issued or transferred when
38 fees are waived pursuant to section 4-209, subsection I, no additional
39 background check is required if the person has already completed a background
40 investigation in connection with the continuing business.

41 C. Each applicant or licensee shall designate a person who shall be
42 responsible for managing the premises. The designated person may be the
43 applicant or licensee. The manager shall be a natural person and shall meet
44 all the requirements for licensure. The same person may be designated as the
45 manager for more than one premises owned by the same licensee. Notice of a

1 change in the manager shall be filed with the director within thirty days
2 after a change.

3 D. No license shall be issued to any person who, within one year
4 before application, has had a license revoked. The director shall not issue
5 an interim permit or restaurant license to any person who, at the same
6 location, has been required to surrender a restaurant license pursuant to
7 section 4-205.02, subsection D or section 4-213 until twelve months after the
8 date of the surrender. No license shall be issued to or renewed for any
9 person who, within five years before application, has been convicted of a
10 felony, or convicted of an offense in another state that would be a felony in
11 this state. For a conviction of a corporation to be a basis for a denial
12 under ~~the provisions of~~ this section, the limitations that are provided in
13 section 4-210, subsection A, paragraph 8 shall apply. No corporation shall
14 have its annual license issued or renewed unless it has on file with the
15 department a list of its officers and directors and any stockholders who own
16 ten per cent or more of the corporation.

17 E. The department of liquor licenses and control shall receive
18 criminal history record information from the department of public safety for
19 applicants for employment with the department of liquor licenses and control
20 or for a license issued by the department of liquor licenses and control.

21 F. The department shall not issue or renew a license for any person
22 who on the request of the director fails to provide the department with
23 complete financial disclosure statements indicating all financial holdings of
24 the person or any other person in or relating to the license applied for,
25 including all cosignatories on financial holdings, land, buildings, leases or
26 other forms of indebtedness that the applicant has incurred or will incur.

27 G. EVERY PERSON WHO APPLIES FOR A SPIRITUOUS LIQUOR LICENSE, A
28 TRANSFER OF A SPIRITUOUS LIQUOR LICENSE OR A RENEWAL OF A SPIRITUOUS LIQUOR
29 LICENSE SHALL PROVIDE DOCUMENTATION TO THE DEPARTMENT THAT THE PERSON HAS
30 OBTAINED LIABILITY INSURANCE IN AT LEAST THE MINIMUM COVERAGE AMOUNT
31 DETERMINED BY THE DIRECTOR FOR TORT CLAIMS THAT ARISE FROM PERSONAL INJURIES,
32 WRONGFUL DEATH OR PROPERTY DAMAGE SUFFERED BY THIRD PARTIES AND THAT WERE
33 PROXIMATELY CAUSED BY THE CONSUMPTION OF SPIRITUOUS LIQUOR AT THE LICENSED
34 PREMISES.

35 Sec. 2. Section 4-210, Arizona Revised Statutes, is amended to read:

36 4-210. Grounds for revocation, suspension and refusal to renew;
37 notice; complaints; hearings

38 A. After notice and hearing, the director may suspend, revoke or
39 refuse to renew any license issued pursuant to this chapter for any of the
40 following reasons:

41 1. There occurs on the licensed premises repeated acts of violence or
42 disorderly conduct.

43 2. The licensee fails to satisfactorily maintain the capability,
44 qualifications and reliability requirements of an applicant for a license
45 prescribed in section 4-202 or 4-203.

1 3. The licensee or controlling person knowingly files with the
2 department an application or other document which contains material
3 information which is false or misleading or while under oath knowingly gives
4 testimony in an investigation or other proceeding under this title which is
5 false or misleading.

6 4. The licensee or controlling person is on the premises habitually
7 intoxicated.

8 5. The licensed business is delinquent for more than ninety days in
9 the payment of taxes, penalties or interest to the state or to any political
10 subdivision of the state.

11 6. The licensee or controlling person obtains, assigns, transfers or
12 sells a spirituous liquor license without compliance with this title or
13 leases or subleases a license.

14 7. The licensee fails to keep for two years and make available to the
15 department upon reasonable request all invoices, records, bills or other
16 papers and documents relating to the purchase, sale and delivery of
17 spirituous liquors and, in the case of a restaurant or hotel-motel licensee,
18 all invoices, records, bills or other papers and documents relating to the
19 purchase, sale and delivery of food.

20 8. The licensee or controlling person is convicted of a felony
21 provided that for a conviction of a corporation to serve as a reason for any
22 action by the director, conduct which constitutes the corporate offense and
23 was the basis for the felony conviction must have been engaged in,
24 authorized, solicited, commanded or recklessly tolerated by the directors of
25 the corporation or by a high managerial agent acting within the scope of
26 employment.

27 9. The licensee or controlling person violates or fails to comply with
28 this title, any rule adopted pursuant to this title or any liquor law of this
29 state or any other state.

30 10. The licensee fails to take reasonable steps to protect the safety
31 of a customer of the licensee entering, leaving or remaining on the licensed
32 premises when the licensee knew or reasonably should have known of the danger
33 to such person, or the licensee fails to take reasonable steps to intervene
34 by notifying law enforcement officials or otherwise to prevent or break up an
35 act of violence or an altercation occurring on the licensed premises or
36 immediately adjacent to the premises when the licensee knew or reasonably
37 should have known of such acts of violence or altercations.

38 11. The licensee or controlling person lacks good moral character.

39 12. The licensee or controlling person knowingly associates with a
40 person who has engaged in racketeering, ~~as defined in section 13-2301,~~ or
41 WHO has been convicted of a felony, and the association is of such a nature
42 as to create a reasonable risk that the licensee will fail to conform to the
43 requirements of this title or of any criminal statute of this state.

44 13. DRUG PARAPHERNALIA AS DEFINED IN SECTION 13-3415 IS SOLD, USED OR
45 DISPLAYED ON THE LICENSED PREMISES.

1 B. For the purposes of:

2 1. Subsection A, paragraph 8 of this section, "high managerial agent"
3 means an officer of a corporation or any other agent of the corporation in a
4 position of comparable authority with respect to the formulation of corporate
5 policy.

6 2. Subsection A, paragraphs 9 and 10 of this section, acts or
7 omissions of an employee of a licensee, which violate any provision of this
8 title or rules adopted pursuant to this title shall be deemed to be acts or
9 omissions of the licensee. Acts or omissions by an employee or licensee
10 committed during the time the licensed premises were operated pursuant to an
11 interim permit or without a license may be charged as if they had been
12 committed during the period the premises were duly licensed.

13 C. The director may suspend, revoke or refuse to issue, transfer or
14 renew a license under this section based solely on the unrelated conduct or
15 fitness of any officer, director, managing agent or other controlling person
16 if the controlling person retains any interest in or control of the licensee
17 after sixty days following written notice to the licensee. If the
18 controlling person holds stock in a corporate licensee or is a partner in a
19 partnership licensee, the controlling person may only divest himself of his
20 interest by transferring the interest to the existing stockholders or
21 partners who must demonstrate to the department that they meet all the
22 requirements for licensure. For the purposes of this subsection, the conduct
23 or fitness of a controlling person is unrelated if it would not be
24 attributable to the licensee.

25 D. If the director finds, based on clear and convincing evidence in
26 the record, that a violation involves the use by the licensee of a
27 drive-through or other physical feature of the licensed premises that allows
28 a customer to purchase spirituous liquor without leaving the customer's
29 vehicle and that the use of that drive-through or other physical feature
30 caused the violation, the director may suspend or terminate the licensee's
31 use of the drive-through or other physical feature for the sale of spirituous
32 liquor, in addition to any other sanction.

33 E. The director may refuse to transfer any license or issue a new
34 license at the same location if the director has filed a complaint against
35 the license or location which has not been resolved alleging a violation of
36 any of the grounds set forth in subsection A of this section until such time
37 as the complaint has been finally adjudicated.

38 F. The director shall receive all complaints of alleged violations of
39 this chapter and is responsible for the investigation of all allegations of a
40 violation of, or noncompliance with, this title, any rule adopted pursuant to
41 this title or any condition imposed upon the licensee by the license. When
42 the director receives three such complaints from any law enforcement agency
43 resulting from three separate incidents at a licensed establishment within a
44 twelve-month period, the director shall transmit a written report to the
45 board setting forth the complaints, the results of any investigation

1 conducted by the law enforcement agency or the department relating to the
2 complaints and a history of all prior complaints against the license and
3 their disposition. The board shall review the report and may direct the
4 director to conduct further investigation of a complaint or to serve a
5 licensee with a complaint and notice of a hearing pursuant to subsection G of
6 this section.

7 G. Upon the director's initiation of an investigation or upon the
8 receipt of a complaint and an investigation of the complaint as deemed
9 necessary, the director may cause a complaint and notice of a hearing to be
10 directed to the licensee setting forth the violations alleged against the
11 licensee and directing the licensee, within fifteen days after service of the
12 complaint and notice of a hearing, to appear by filing with the director an
13 answer to the complaint. Failure of the licensee to answer may be deemed an
14 admission by the licensee of commission of the act charged in the complaint.
15 The director may then vacate the hearing and impose any sanction provided by
16 this article. The director may waive any sanction for good cause shown
17 including excusable neglect. With respect to any violation of this title or
18 any rule adopted pursuant to this title that is based on the act or omission
19 of a licensee's employee, the director shall consider evidence of mitigation
20 presented by the licensee and established by a preponderance of the evidence
21 that the employee acted intentionally and in violation of the express
22 direction or policy adopted by the licensee and communicated to the employee
23 and that the employee successfully completed training in a course approved by
24 the director pursuant to section 4-112, subsection G, paragraph 2. The
25 director may set the hearing before himself or an administrative law judge on
26 any of the grounds set forth in subsection A of this section. Instead of
27 issuing a complaint, the director may provide for informal disposition of the
28 matter by consent agreement or may issue a written warning to the licensee.
29 If a warning is issued, the licensee may reply in writing and the director
30 shall keep a record of the warning and the reply.

31 H. A hearing shall conform to the requirements of title 41, chapter 6,
32 article 10. At the hearing an attorney or corporate officer or employee of a
33 corporation may represent the corporation.

34 I. The expiration, cancellation, revocation, reversion, surrender,
35 acceptance of surrender or termination in any other manner of a license does
36 not prevent the initiation or completion of a disciplinary proceeding
37 pursuant to this section against the licensee or license. An order issued
38 pursuant to a disciplinary proceeding against a license is enforceable
39 against other licenses or subsequent licenses in which the licensee or
40 controlling person of the license has a controlling interest.

41 J. The department shall provide the same notice as is provided to the
42 licensee to a lienholder, which has provided a document under section 4-112,
43 subsection B, paragraph 3, of all disciplinary or compliance action with
44 respect to a license issued pursuant to this title. The state shall not be

1 liable for damages for any failure to provide any notice pursuant to this
2 subsection.

3 K. In any disciplinary action pursuant to this title, a lienholder may
4 participate in the determination of the action. The director shall consider
5 mitigation on behalf of the lienholder if the lienholder proves all of the
6 following by a preponderance of the evidence:

7 1. That the lienholder's interest is a bona fide security interest.
8 For the purposes of this paragraph, "bona fide security interest" means the
9 lienholder provides actual consideration to the licensee or the licensee's
10 predecessor in interest in exchange for the lienholder's interest. Bona fide
11 security interest includes a lien taken by the seller of a license as
12 security for the seller's receipt of all or part of the purchase price of the
13 license.

14 2. That a statement of legal or equitable interest was filed with the
15 department before the alleged conduct occurred which is the basis for the
16 action against the license.

17 3. That the lienholder took reasonable steps to correct the licensee's
18 prior actions, if any, or initiated an action pursuant to available contract
19 rights against the licensee for the forfeiture of the license after being
20 provided with notice by the department of disciplinary action as provided in
21 subsection J of this section.

22 4. That the lienholder was free of responsibility for the conduct
23 which is the basis for the proposed revocation.

24 5. That the lienholder reasonably attempted to remain informed by the
25 licensee about the business' conduct.

26 L. If the director decides not to revoke the license based on the
27 circumstances provided in subsection K of this section, the director may
28 issue an order requiring either, or both, of the following:

29 1. The forfeiture of all interest of the licensee in the license.

30 2. The lienholder to pay any civil monetary penalty imposed on the
31 licensee.

32 M. If any on-sale licensee proposes to provide large capacity
33 entertainment events or sporting events with an attendance capacity exceeding
34 a limit established by the director, the director may request a security plan
35 from the licensee that may include trained security officers, lighting and
36 other requirements. This subsection exclusively prescribes the security
37 requirements for a licensee and does not create any civil liability for the
38 state, its agencies, agents or employees or a person licensed under this
39 title or agents or employees of a licensee.